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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/365,748	08/03/1999	MICHAEL DAVID BEDNAREK	MDB-1	2195

7590	08/23/2004

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EXAMINER
JANVIER, JEAN D

ART UNIT	PAPER NUMBER
3622	

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/365,748	BEDNAREK, MICHAEL DAVID
	Examiner	Art Unit
	Jean D Janvier	3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 May 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *58-77* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *58-77* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

Response To Applicant's Brief

In view of the Appeal Brief filed on 05/18/04 PROSECUTION IS HEREBY

REOPENED.

To avoid abandonment of the application, appellant must exercise one of the

following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply

under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by

a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or

1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Furthermore, the Applicant is encouraged to contact the Examiner to discuss the

101 issues and possible ways to amend the claims to thereby overcome the art rejection.

DETAILED ACTION

Specification

Status of the claims

Claims 38-57 were canceled and claims 58-77 were added. **Claims 58-77 are**

now pending in the Instant Application.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

As an initial matter, the United States Constitution under Art. I, §8, cl. 8 gave

Congress the power to "[p]romote the progress of science and useful arts, by securing for

limited times to authors and inventors the exclusive right to their respective writings and

discoveries". In carrying out this power, Congress authorized under 35 U.S.C. §101 a

grant of a patent to "[w]hoever invents or discovers any new and useful process, machine,

manufacture, or composition or matter, or any new and useful improvement thereof."

Therefore, a fundamental premise is that a patent is a statutorily created vehicle for

Congress to confer an exclusive right to the inventors for "inventions" that promote the

progress of "science and the useful arts". The phrase "technological arts" has been

created and used by the courts to offer another view of the term "useful arts". See *In re*

Musgrave, 167 USPQ (BNA) 280 (CCPA 1970). Hence, the first test of whether an

invention is eligible for a patent is to determine if the invention is within the

"technological arts".

Further, despite the express language of §101, several judicially created

exceptions have been established to exclude certain subject matter as being patentable

subject matter covered by §101. These exceptions include "laws of nature", "natural

phenomena", and "abstract ideas". See *Diamond v. Diehr*, 450, U.S. 175, 185, 209 USPQ

(BNA) 1, 7 (1981). However, courts have found that even if an invention incorporates

abstract ideas, such as mathematical algorithms, the invention may nevertheless be

statutory subject matter if the invention as a whole produces a "useful, concrete and tangible result." See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 149 F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998).

This "two prong" test was evident when the Court of Customs and Patent Appeals (CCPA) decided an appeal from the Board of Patent Appeals and Interferences (BPAI). See *In re Toma*, 197 USPQ (BNA) 852 (CCPA 1978). In *Toma*, the court held that the recited mathematical algorithm did not render the claim as a whole non-statutory using the Freeman-Walter-Abele test as applied to *Gottschalk v. Benson,* 409 U.S. 63, 175 USPQ (BNA) 673 (1972). Additionally, the court decided separately on the issue of the "technological arts". The court developed a "technological arts" analysis:

> The "technological" or "useful" arts inquiry must focus on whether the claimed subject matter...is statutory, not on whether the product of the claimed subject matter...is statutory, not on whether the prior art which the claimed subject matter purports to replace...is statutory, and not on whether the claimed subject matter is presently perceived to be an improvement over the prior art, e.g., whether it "enhances" the operation of a machine. *In re Toma* at 857.

In *Toma*, the claimed invention was a computer program for translating a source human language (e.g., Russian) into a target human language (e.g., English). The court found that the claimed computer implemented process was within the "technological art" because the claimed invention was an operation being performed by a computer within a computer.

The decision in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* never addressed this prong of the test. In *State Street Bank & Trust Co.,* the court found that the "mathematical exception" using the Freeman-Walter-Abele test has little, if any, application to determining the presence of statutory subject matter but rather, statutory subject matter should be based on whether the operation produces a "useful, concrete and tangible result". See *State Street Bank & Trust Co.* at 1374. Furthermore, the court found that there was no "business method exception" since the court decisions that purported to create such exceptions were based on novelty or lack of enablement issues and not on statutory grounds. Therefore, the court held that "[w]hether the patent's claims are too broad to be patentable is not to be judged under §101, but rather under §§102, 103 and 112." See *State Street Bank & Trust Co.* at 1377. Both of these analysis goes towards whether the claimed invention is non-statutory because of the presence of an abstract idea. Indeed, *State Street* abolished the Freeman-Walter-Abele test used in *Toma.* However, State Street never addressed the second part of the analysis, i.e., the "technological arts" test established in *Toma* because the invention in *State Street* (i.e., a computerized system for determining the year-end income, expense, and capital gain or loss for the portfolio) was already determined to be within the technological arts under the *Toma* test. This dichotomy has been recently acknowledged by the Board of Patent Appeals and Interferences (BPAI) in affirming a §101 rejection finding the claimed invention to be non-statutory. See *Ex parte Bowman,* 61 USPQ2d (BNA) 1669 (BdPatApp&Int 2001).

Claims and 74-77 are rejected under 35 U.S.C. 101 because the claimed invention

is directed to a non-statutory subject matter. Here, the steps as recited in the claims

pertain to a manual process and therefore, the claims do not fall within the technological

art. For example, although independent claim 74 now recites in the preamble "... A

computer-implemented method of providing ...", however the body of the claim does

incorporate any hardware or device. To this end, a relevant device or hardware, such as a

computer system, a computer database, a data communication, computer network, the

Internet and so and so forth, should be used to implement the steps or process recited in at

least independent claim 74.

> Whoever invents or discovers any new and useful process, machine, manufacture, or
>
> composition of matter, or any new and useful improvement thereof, may obtain a patent therefor,
>
> subject to the conditions and requirements of this title.

Claim 58 does not define a method, a system, an apparatus, a computer readable

medium or any other statutory class. The claim merely recites a series of disjoints,

passive and dormant elements with their related descriptions or purposes, but the

elements within the body of the claim do not do particularly present or define the subject

matter for which the Applicant is seeking patent protection or exclusive rights since these

elements are not incorporated in any process. Therefore, the claim simply recites non-

functional descriptive materials and non-statutory subject matter. Moreover, the claim

does not produce a useful, concrete and tangible result.

Furthermore, the claim recites **a plurality of participants, which is a non-statutory subject matter under 35 U.S.C. 101. "Human beings" or "Living species" cannot be claimed in this manner. See MPEP 2105.**

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims **58-66** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 58 is confusing because it is an improperly drafted claim. The claim clearly begins in the preamble by reciting **a computer implemented incentive program for encouraging certain participations, the program comprising**:

A plurality of participants;

A participant ID associated with each participant;

A first reward program....

A second reward program...

A program points....

Here, the claimed invention is directed to non-statutory subject matter. Indeed, controlling claim 58 does not recite a method, a system, a computer readable medium and so on. The claim simply recites disjoints elements that do not perform any real task.

The claim does not define a method, a system, an apparatus, a computer readable medium or any other statutory class. The claim merely recites, as shown above in bold, a series of disjoints, passive and dormant elements with their related descriptions or purposes, but the elements within the claim do not particularly present or define the subject matter for which the Applicant is seeking patent protection or exclusive rights since these elements are not incorporated or used in any process. These elements are considered to be non-functional limitations.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 58-62, 67-73 and 74-77 are rejected under 35 U.S.C. 102(e) as being anticipated by Ikeda et al. (hereinafter Ikeda), US Patent 5,937,391A.

As per claims 58, 67 and 74, Ikeda discloses a point-service system (incentive reward program) for issuing points to a customer for purchases made at various stores or shops within an online shopping mall (first reward program) comprising a points issuing unit 1 of fig. 1 for issuing points based on purchase amounts of he customer or participant (col. 3: 52-53), a points management unit 2 of fig. 2 for storing the points (total points or base points) accumulated by the customer and a points redeeming unit 3 of fig. 1 for reducing a purchase amount of the customer upon redeeming points at any participating store within the mall. This system shortens the time from issuing points to redeeming points. In one embodiment, Ikeda discloses a service system wherein a specific customer makes a request to buy goods (participant's action) from a home page of an online shopping mall and in response to this request, the service system causes the number of effective points (base points) accumulated by the customer and issued by a plurality of shops for each purchase made at each respective shop to be displayed on the customer's terminal or participant's unit, subsequent to identifying the customer or participant using the customer's or participant's ID, by referring to the data of each shop forming part of the online shopping mall. If the customer still decides to order a product (participant's action), he can click on a shopping button associated with one of the displayed shops to subsequently access an order button and. hence, the point-service system or service system linked to a web server of the online shopping mall is activated to issue points or redeem points at the customer's request or instructions when he inputs an order (see abstract; col. 2: 10-67; figs. 1-19). It is to be understood that a customer can explicitly or implicitly make a request from the point-service system to buy a product from a participating shop, redeem points or simply query the point-service system database for

the effective points (base points) accumulated to date (col. 5: 22-38; col. 4: 34-40; col.

10: 55 to col. 11: 3).

Moreover, the points issuing unit issues points based on the purchase amount of a

customer or participant at an online shopping mall. The point issuing unit issues points

based upon, for example, input information such as the name of the shop and the

purchase amount and the points issue ratio set for each shop. For example, the points

issue ratio is indicative of how many points are issued when a customer or participant

spends 100 Yen at a shop (1 point for every 100 Yen spent). The points issue ratio can

also be set to a value larger than a normal value in a special campaign period such as an

end-of-year sales period (col. 2: 28-37).

In addition, a points redeeming ratio performs a points redeeming process by

reducing the purchase amount for a particular customer or participant during a transaction

at a specific shop, based on the number of total points (base points or effective points)

accumulated thus far throughout the system or at that shop, wherein the customer or

participant chooses to redeem some of his points (base points) at the specific shop and

wherein each participating shop has a different points redeeming ratio (providing a

second reward program that assigns a redemption rate for a customer's transaction based

on the redemption points ratio available at the shop, wherein the customer's program

points are functions of the effective or base points issued and the redemption points ratio

set for the shop). For example, shop A of fig. 9 reduces during a certain period of time

the customer's purchase by 1 Yen for every 1 point redeemed, hence a 1:1 ratio or

redemption rate. Like the points issue ratio, the points redeeming ratio or redemption rate

for a specific period, such as an end-of-year sales campaign, can be set to a value higher

than a normal period (increasing or adjusting or providing a higher redemption points

ratio or redemption rate to the customer if the customer performs an action such as

purchasing products at a shop participating in the end-of-year sales campaign). For

instance, 10, 000- 2 indicates that the points issue ratio will double when the number of

accumulated points reaches 10,000 points (2 points for every 100 Yen spent upon

reaching 10, 000 effective or base points). Further, the point redemption ratio or rate for

shop F, during a specific period of time, doubles that of the other shops, thus a 2:1 ratio

(2 Yen for every 1 point redeemed) (col. 2: 38-64: col. 3: 62-67; col. 8: 1-23; col. 9: 55 to

col. 10: 2). In other words, each specific shop issues points to a customer or redeems the

customer's effective points (base points) during a purchase transaction in accordance

with the points issue ratio and points redemption ratio set for each specific shop during a

specific period of time. **In short, a customer can be allowed special services if he buys**

goods at the same shop (performing an action), for example shop A, by setting the

points redeemed ratio or point redemption rate for the customer or participant

higher than the common points redeeming ratio of the online shopping mall

(adjusting the customer's or participant's redemption rate when he performs an

action such as patronizing the same shop). Here, it is to be understood that two

customers redeeming the same number of effective points or total accumulated points or

base points (**action points**) during a purchase transaction (performing the same action) at

the same shop or shop A will be assigned two different redemption rates. One customer

will receive a standard redemption rate and the other a higher redemption rate for being a

loyal customer (col. 11: 50-53).

In summary, Ikeda discloses a system for distributing points to identified

customers who purchase items from a plurality of shops within a mall system, wherein

each shop has its own point-issuing ratio (first reward program). The system maintains in

a table or database the number of points (base points) accumulated by a customer

throughout the mall. Each shop within the mall has its own point-redemption ratio.

Moreover, during a transaction involving points redemption at a particular shop, the

customer decides to redeem a certain number of points from his total accumulated points

or base points for this shop, the system determines in real-time the value of the

customer's total points in accordance with the shop point-redemption ratio or individual

redemption rate (RR), wherein the customer can receive a higher individual point-

redemption ratio if he frequently buys products at the shop or the shop is running a

special end-of-the year promotion (determining the participant's redemption rate via a

second reward program and adjusting the redemption rate for the customer or participant

based on his action (frequently buying at the shop or buying during a special promotional

period)-col. 11: 50-53). Additionally, the customer's determined redemption ratio at the

shop is immediately retrieved (from a storage or a table or database or memory) once the

customer or participant logs into the mall and indicates his intention to purchase products

from the shop while redeeming a certain number of points for that shop. In short, contrary

to the Applicant's contention, the participant's or customer's total redeemable points

value at the shop is equal to the participant's total points or base points for that shop

multiplied by a predetermined ratio or factor (for example 1 Yen for each point or 2 Yens

for each point- Col. 8: 1-23; figs. 7-9).

(Col. 6: 29-38; col. 10: 16-30; col. 10: 55: to col. 11: 62; col. 11: 63 to col. 12: 20;

col.

13: 28-32; figs. 6, 9 and 14-15).

As per claims 59-62 and 71-73, 68-70 and 75-77, Ikeda discloses a point-service

system (incentive reward program) for issuing points to a customer for purchases made at

various stores or shops within an online shopping mall (first reward program) comprising

a points issuing unit 1 of fig. 1 for issuing points based on purchase amounts of he

customer or participant (col. 3: 52-53), a points management unit 2 of fig. 2 for storing

the points (total points or base points) accumulated by the customer and a points

redeeming unit 3 of fig. 1 for reducing a purchase amount of the customer upon

redeeming points at any participating store within the mall. This system shortens the time

from issuing points to redeeming points. In one embodiment, Ikeda discloses a service

system wherein a specific customer makes a request to buy goods (participant's action)

from a home page of an online shopping mall and in response to this request, the service

system causes the number of effective points (base points) accumulated by the customer

and issued by a plurality of shops for each purchase made at each respective shop to be

displayed on the customer's terminal or participant's unit, subsequent to identifying the

customer or participant using the customer's or participant's ID, by referring to the data

of each shop forming part of the online shopping mall. If the customer still decides to

order a product (participant's action), he can click on a shopping button associated with

one of the displayed shops to subsequently access an order button and. hence, the point-

service system or service system linked to a web server of the online shopping mall is

activated to issue points or redeem points at the customer's request or instructions when

he inputs an order (see abstract; col. 2: 10-67; figs. 1-19). It is to be understood that a

customer can explicitly or implicitly make a request from the point-service system to buy

a product from a participating shop, redeem points or simply query the point-service

system database for the effective points (base points) accumulated to date (col. 5: 22-38;

col. 4: 34-40; col. 10: 55 to col. 11: 3).

Moreover, the points issuing unit issues points based on the purchase amount of a

customer or participant at an online shopping mall. The point issuing unit issues points

based upon, for example, input information such as the name of the shop and the

purchase amount and the points issue ratio set for each shop. For example, the points

issue ratio is indicative of how many points are issued when a customer or participant

spends 100 Yen at a shop (1 point for every 100 Yen spent). The points issue ratio can

also be set to a value larger than a normal value in a special campaign period such as an

end-of-year sales period (col. 2: 28-37).

In addition, a points redeeming ratio performs a points redeeming process by

reducing the purchase amount for a particular customer or participant during a transaction

at a specific shop, based on the number of total points (base points or effective points)

accumulated thus far throughout the system or at that shop, wherein the customer or

participant chooses to redeem some of his points (base points) at the specific shop and

wherein each participating shop has a different points redeeming ratio (providing a

second reward program that assigns a redemption rate for a customer's transaction based

on the redemption points ratio available at the shop, wherein the customer's program

points are functions of the effective or base points issued and the redemption points ratio

set for the shop). For example, shop A of fig. 9 reduces during a certain period of time

the customer's purchase by 1 Yen for every 1 point redeemed, hence a 1:1 ratio or

redemption rate. Like the points issue ratio, the points redeeming ratio or redemption rate

for a specific period, such as an end-of-year sales campaign, can be set to a value higher

than a normal period (increasing or adjusting or providing a higher redemption points

ratio or redemption rate to the customer if the customer performs an action such as

purchasing products at a shop participating in the end-of-year sales campaign). For

instance, 10, 000- 2 indicates that the points issue ratio will double when the number of

accumulated points reaches 10,000 points (2 points for every 100 Yen spent upon

reaching 10, 000 effective or base points). Further, the point redemption ratio or rate for

shop F, during a specific period of time, doubles that of the other shops, thus a 2:1 ratio

(2 Yen for every 1 point redeemed) (col. 2: 38-64: col. 3: 62-67; col. 8: 1-23; col. 9: 55 to

col. 10: 2). In other words, each specific shop issues points to a customer or redeems the

customer's effective points (base points) during a purchase transaction in accordance

with the points issue ratio and points redemption ratio set for each specific shop during a

specific period of time. **In short, a customer can be allowed special services if he buys**

goods at the same shop (performing an action) by setting the points redeemed ratio

or point redemption rate for the customer or participant higher than the common

points redeeming ratio of the online shopping mall (adjusting the customer's or

participant's redemption rate when he performs an action such as patronizing the

same shop) (col. 11: 50-53).

(Col. 6: 29-38; col. 10: 16-30; col. 10: 55: to col. 11: 62; col. 11: 63 to col. 12: 20;

col. 13: 28-32; figs. 6, 9 and 14-15).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 63-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikeda et al. (hereinafter Ikeda), US Patent 5,937,391A in view of Cook et al, US Patent 5,766,075A.

In general, concerning claims 63-66, Ikeda does not suggest using, among other things, the point service system or reward program at a casino.

However, regarding claims 63-64 and 66, Cook et al disclose a bet guarantee system in which a player or patron is guaranteed that at least a minimum amount of money will be returned to the player based upon, among other things, the amount of money lost during an hour or a trip by tracking the player's activities who uses a

conventional bar coded card inserted into a casino machine (col. 2: 40) while gambling. During the course of a day, a patron may have many ratings at various gaming machines on a particular floor and thus over the course of a trip, there will be an even larger number of ratings. A player's guarantee bet or reward can be determined, in a number of ways, as the greater of: 1) the patron's loss during the first hour or other time interval of play; 2) a percentage of the casino's total trip theoretical win for that patron; 3) a percentage of the patron's actual losses during the trip, or 4) an arbitrary dollar amount (col. 2: 41-59). It should be understood that other suitable combinations might be used to guarantee a bet coupon to the patron as known in the art (See abstract; Col. 1: 13-55; col. 1: 66 to col. 3: 9).

Therefore, an ordinary skilled artisan would have been motivated at the time of the invention to incorporate Cook et al guarantee bet system into Ikeda's point service system or reward program so as to use the Ikeda's system or more specifically the reward program at a casino facility, whereby a player or patron using his bar coded card can earn credits or points for gambling at the casino facility based upon a number of factors including the patron's or player's loss during the first hour or other time interval of play, a percentage of the casino's total trip theoretical win for that patron or player, a percentage of the patron's or player's actual losses during the trip or an arbitrary dollar amount, thereby ensuring, among other things, that a portion of the player's gambling loss is given back to the player while encouraging the player or patron to return to the casino facility to redeem his credits or points or to gamble. By so doing, the casino facility will be able to keep its current customers or players while increasing its revenue.

Claim 65 further recites a computer implemented incentive program applied to a

casino gaming, wherein the variable redemption rate is used to provide an auxiliary game

pursuant to which a player that has a net positive balance can place an auxiliary bet that,

can either increase or decrease the player's credits or points. Nevertheless, the Examiner

notes that there is no difference between the auxiliary game as described herein and the

game previously mentioned in claims 43 and/or 44. The player or patron may either lose

or win money or have his credits or points decrease or increase regardless of the game the

player is playing. **Therefore, claim 65 is rejected under a similar rationale as**

respectively applied to claim 64.

Conclusion

Although the following references were not used in the Office Action, they were

highly considered by the Examiner. Applicants are further directed to consult these

references.

US Patent 5,806,045A to Biorge et al. discloses a method and system for

allocating and redeeming incentive credits between a portable device and a base device.

US Patent 6, 142, 371A to Omeda discloses a customer service system having a

point value and discount rate.

US Patent 5, 537, 314 to Kanter discloses referral recognition system having a

point and discount conversion tables.

US Patent 6,003, 013 to Boushy discloses a casino incentive reward program for

providing reward points to a player utilizing casino game machines via a network.

Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

advisory action. In no event, however, will the statutory period for reply expire later than

SIX MONTHS from the date of this final action.

Any inquiry concerning this communication from the Examiner should be

directed to Jean D. Janvier, whose telephone number is (703) 308-6287). The

aforementioned can normally be reached Monday-Thursday from 10:00AM to 6:00 PM

EST. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's

Supervisor, Mr. Eric W. Stamber, can be reached at (703) 305- 8469.

For information on the status of your case, please call the help desk at (703) 308-

1113. Further, the following fax numbers can be used, if need be, by the Applicant(s):

After Final-   703-872-9327

Before Final -703-872-9326

Non-Official Draft- 703-746-7240

Customer Service- 703-872-9325

JDJ

08/11/04